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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/579,630	05/26/2000	Robert McKinnon JR.	5925.36003	7855

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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

M.K.

Office Action Summary

Application No.

09/579,630

Applicant(s)

MCKINNON, ROBERT

Examiner

Niki M. Eloshway

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45, 47, 48 and 50-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45, 47, 48 and 50-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 9, 17, 18 and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Waters (U.S. 4,967,944). Waters teaches a lid 14 with spaced upper and lower sides, shown in figures 4 and 5. The recesses are elements 40.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters in view of Bonnema et al. (U.S. 4,726,490). Waters discloses the claimed invention except for the wedges. Bonnema et al. teach that it is known to provide a container member with wedges (see elements 45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Waters with the wedges of Bonnema et al., in order to securely fasten the lid to the tray in the closed position.
5. Claims 3-6, 12, 13, 15, 16, 18-35, 39-45, 47, 48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters in view of Wischhusen et al. (U.S. 50,16,756). Waters discloses the

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claimed invention except for the recesses being rectangularly shaped. Wischhusen et al. teaches that it is known to provide a compartmented container with rectangular compartments (see figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Waters with rectangular recesses, in order to container rectangular items in each compartment.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters in view of Wischhusen et al., as applied to claim 5 above, and further in view of Bonnema et al. (U.S. 4,726,490). The modified lid of Waters discloses the claimed invention except for the wedges. Bonnema et al. teach that it is known to provide a container member with wedges (see elements 45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified lid of Waters with the wedges of Bonnema et al., in order to securely fasten the lid to the tray in the closed position.

7. Claims 8, 10, 51, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters in view of Thornbloom, Jr. (U.S. 3,979,007). Waters discloses the claimed invention except for the lid being solid. Thornbloom, Jr. teaches that lids can be either blow molded or solid (see col. 3 lines 6-7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Waters being solid, as taught by Thornbloom, Jr., in order to increase the strength of the lid.

8. Claims 11, 14, 17, 52-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters in view of Wischhusen et al., as applied to claims 5 and 18 above, and further in view of Thornbloom, Jr. (U.S. 3,979,007). The modified lid of Waters discloses the claimed invention except for the lid being solid. Thornbloom, Jr. teaches that lids can be either blow molded or solid (see col. 3 lines 6-7). It would have been obvious to one having ordinary skill in the art at the time the invention

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was made to provide the modified lid of Waters being solid, as taught by Thornbloom, Jr., in order to increase the strength of the lid.

9. Claims 59-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters in view of Wischhusen et al. (U.S. 50,16,756) and Thornbloom, Jr. (U.S. 3,979,007). Waters discloses the claimed invention except for the recesses being rectangularly shaped. Wischhusen et al. teaches that it is known to provide a compartmented container with rectangular compartments (see figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the lid of Waters with rectangular recesses, in order to container rectangular items in each compartment.

The modified lid of Waters discloses the claimed invention except for the lid being solid. Thornbloom, Jr. teaches that lids can be either blow molded or solid (see col. 3 lines 6-7. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified lid of Waters being solid, as taught by Thornbloom, Jr., in order to increase the strength of the lid.

Response to Arguments

10. Applicant's arguments filed April 8, 2003 have been fully considered but they are not persuasive. Regarding the Waters invention and the outer edge set forth in the present claims, the outer edge of Waters extends vertically from the upper surface to the lower surface. The lower surface consists of the lower surface of element 41, the portion of element 44 which extends downwardly from the central portion on three sides, and the portion of element 44 which extends horizontally on three sides. The outer edge extends vertically between the perimeter of the upper surface of 42 and horizontally extending portion of element 44 (which is considered to be part of the lower surface) on three sides, and between the perimeter of the upper surface of 42 and the perimeter of the lower surface

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of 42 on the fourth side (shown on the right hand side of figure 4). Therefore, the outer edge exists on all four sides of the Waters lid, and is contiguous with the bottom surface on all four sides of the Waters lid.

11. Applicant argues that Waters does not “disclose or teach the area of the lower surface to be greater than the total area surrounded by the outer edges of the recesses as set forth in both claims 1 and 58.” The Examiner disagrees with this position. The outer edges of Waters, as described in the paragraph above, bound an area with a substantially square perimeter. The lower surface, as described in the paragraph above, includes that area and the additional area due to the vertically extending walls of the recesses in the lower surface.

12. It has been held that a prior art reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the applied reference teaches closures of increased strength.

Conclusion

13. Applicant’s amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

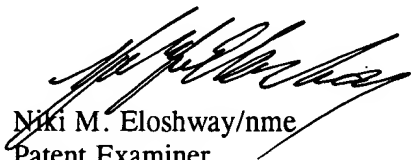
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from

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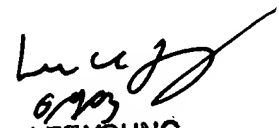
the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.



Niki M. Eloshway/nme
Patent Examiner
June 6, 2003



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